# SUPREME COURT OF THE UNITED STATES.

No. 136.—October Term, 1920.

The Western Pacific Railroad Company, Appellant, vs. The United States. } Appeal from the Court of Claims.

[March 7, 1921.]

Mr. Justice McKenna delivered the opinion of the Court.

The basic proposition in this case, and most of its subsidiary considerations, are the same as in No. 134. It was argued at the same time as the latter case, and, as in that case, it is to recover amounts withheld by the accounting officers of the Government as land-grant deductions in settlements for transportation of the personal effects of Army officers.

It is asserted, however, that this action differs from No. 134 in that appellant, the Western Pacific Railroad Company was not completed and in operation until 1910 so that it is said "there is absent the element of previous course of dealings relied upon by the Government, and in that there was introduced in evidence" testimony to the effect that the first voucher presented for transportation service was for full tariff rates.

It is stated in the findings that the real claimants in the case are the receivers of the railroad but that its name is used to designate claimants for convenience, and that between June 10, 1910 and March 18, 1915, the railroad at the request of the United States, as shipper or consignor, received from other railroad companies at connecting points, on Government bills of lading, and transported over its lines, the effects and property of officers of the United States Army, changing stations under orders.

It further appears that from June 10, 1910 to March 18, 1915, the presentation of claims, character of vouchers accompanying the same, action thereon by the accounting officers of the Government, payment and receipt were the same as No. 134 except, it is found, that "settlements for charges on freight shipments on Government

bills of lading were in charge of one David A. McLean, head of the freight revising bureau in the office of the general auditor of the plaintiff (appellant) in San Francisco." And it is found "it was the practice of said McLean to revise the bills of lading and apply the rates applicable on the traffic at commercial rates, make the land-grant deduction and compute the freight charges at the net rate. After a month's bills of lading had been revised it was his practice to check up with the quartermaster's office and adjust differences, where there were any differences, as to the correct charges. He then caused the claims to be stated on the prescribed voucher form and after being signed they, with the bills of lading attached, were forwarded to the quartermaster for payment. It appears that to the best recollection of said McLean he stated the first of these claims, during this period, at commercial rates, but being informed by the quartermaster's office of the applicability of land-grant rates under the holding of the Comptroller and the established practice, he restated the claim on a land-grant basis. It further appears that he had just come to the service of the plaintiff; that he had had no experience in the rendering of bills for Government transportation; that as soon as he learned the custom with reference thereto he rendered bills for transportation of the character here involved at land-grant rates and continued to do so during all of said period. The rendering of the bill referred to at commercial rates, if in fact he so rendered it, was due to his ignorance of established practice and not because of any intention to question the propriety of the practice or to claim as a matter of right the application of commercial rates. It is not shown that at any time during this entire period he ever questioned the application of land-grant rates to such transportation or protested any settlements on that account, but all bills rendered by him, except as stated, were rendered at land-grant rates, and when so rendered he did not expect any further compensation and never expected compensation at other than land-grant rates until after the decision of the *Chicago, Milwaukee and St Paul* case by this court."*

It is further found that "the difference between the amounts claimed by the plaintiff and paid on account of said transportation during said period and the amount it would receive had it claimed and been paid full commercial rates without land-grant deduction

*50 Ct. Cls. 412.

is $5,760.89." The rulings of the accounting officers are detailed in the findings.

From March 18, 1915 to August 1, 1916, it is found that appellant was entitled "to payment at the regular tariff rates applicable." The Government accounting officers, notwithstanding, "issued warrants for net amounts after making land grant deductions." Against this appellant protested. The amounts deducted amounted to $851.78.

The conclusion of the court was, and its decision was, that appellant was entitled to judgment for the sum of $851.78 and that as to the other amounts its petition should be dismissed. For this the court gave as authority its decision in the *Denver and Rio Grande R. R. Co.* v. *United States*, No. 33391, decided on the same day.

The opinion in the latter case is set out in the record at page 16.

The argument in this case is the same as in No. 134, and rests on the same considerations. This case, as we have seen, was decided on the authority of *Denver and Rio Grande R. R. Co.* v. *United States* and the latter on the *R. & O. R. R. Co.* v. *United States*, 52 Ct. Cls. 468 and 134.

A contention, however, is made that was not made in No. 134, that is, that "under the Interstate Commerce Law the final carrier (appellant was final carrier of the transportation with which this case is concerned) is not only empowered to collect the through charge, but is burdened with the duty and obligation of collecting the full published tariff rate and is powerless to relieve or release a shipper or consignee from any part of the same."

The further contention is that within this obligation is the property in the pending case. The immediate answer is that Section 22 of the Interstate Commerce Act permits reduced rates to the United States and that by Conference Ruling of the Interstate Commerce Commission No. 33 of February 3, 1908, Section 22 is made applicable to property transported for the United States. The transportation in the present case was for the Government and in providing for it and paying for it the Government performed a governmental service.

*Judgment affirmed.*

Mr. Justice PITNEY and Mr. Justice CLARKE concur in the result.